

Divorce (Financial Provision) Bill [HL]

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TO

Amend the Matrimonial Causes Act 1973 and to make provision in connection with financial settlements following divorce.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Amendment of the Matrimonial Causes Act 1973

- (1) Section 25 of the Matrimonial Causes Act 1973 (matters to which court is to have regard in deciding how to exercise its powers under ss. 23, 24 and 24A) is repealed.
- (2) References to section 25 of the Matrimonial Causes Act 1973 in the Civil Partnership Act 2004 and the Marriage (Same Sex Couples) Act 2013 shall be read as references to the provisions of this Act. 5
- (3) In this Act—
- “divorce” includes dissolution of a civil partnership;
 - “marriage” includes civil partnership; 10
 - “pre-nuptial agreement” means an agreement entered into in contemplation of marriage for the purpose of regulating the affairs of the parties should their marriage break down; and
 - “post-nuptial agreement” means an agreement entered into after marriage, by the parties to the marriage, for the purpose of regulating their affairs should the marriage break down. 15
- (4) Any reference in this Act to a party to a marriage includes a reference to a civil partner.

2 Applications for court orders

In an action for divorce either party may apply to the court for one or more of the following orders— 20

- (a) an order for payment of a lump sum to him or her by the other party to the marriage;

- (b) an order for the transfer of property to him or her by the other party to the marriage;
- (c) an order for the making of a periodical payment to him or her by the other party to the marriage;
- (d) a pension sharing order.

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3 Pre-nuptial and post-nuptial agreements

- (1) For the purposes of this Act, a pre-nuptial or post-nuptial agreement is to be treated as binding unless –
 - (a) the agreement attempted to impose an obligation on a third party who had not agreed in advance to be bound by it;
 - (b) a party did not receive his or her own legal advice before the agreement was made;
 - (c) the agreement was made less than 21 days before the marriage;
 - (d) there was no full disclosure of assets as between the parties before it was made; or
 - (e) the agreement is unenforceable under the rules of contract law.
- (2) Where there is a binding pre-nuptial or post-nuptial agreement in force, the court may consider the making of an order for periodical payments, for the payment of a lump sum, for the adjustment or sale of property or for pension sharing only to the extent to which the agreement does not deal with the matter.

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4 Matrimonial property

- (1) The net value of the matrimonial property should be shared fairly between the parties to the marriage.
- (2) In applying the principle set out in subsection (1), the net value of the matrimonial property shall be taken to be shared fairly between the parties when it is shared equally.
- (3) The net value of the property shall be the value of the property at the relevant date after deduction of any debts incurred by one or both of the parties to the marriage –
 - (a) before the marriage so far as they relate to the matrimonial property; and
 - (b) during the marriage;
 which are outstanding at that date.
- (4) In this section the relevant date means the date –
 - (a) on which the parties ceased to cohabit; or
 - (b) of service of the petition for divorce;
 whichever is the earlier.
- (5) Subject to the special circumstances set out in subsection (6), matrimonial property means all the property belonging to the parties or either of them at the relevant date which was acquired by them or one of them (otherwise than by way of gift or succession from a third party) –
 - (a) before the marriage for use by them as a family home or as furniture or fittings for such home; or
 - (b) during the marriage but before the relevant date.

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- (6) Special circumstances may justify departing from equal sharing of the matrimonial property, namely –
- (a) the terms of any agreement between the parties relating to the ownership or division of any of the matrimonial property;
 - (b) the source of the funds or assets used to acquire any of the matrimonial property where those funds or assets were not derived from the income or efforts of the parties during the marriage; 5
 - (c) any destruction, dissipation or alienation of property by either party;
 - (d) the nature and use of the matrimonial property (such as use for business purposes or as a family home) and the extent to which it is reasonable to expect it to be realised or divided or used as security; 10
 - (e) the needs of any children of the family aged under 21; and
 - (f) the actual or prospective liability for any expenses of valuation or transfer of property in connection with the divorce.
- 5 Periodical payments and lump sums 15**
- (1) An order for periodical payments made under this Act may only be for a definite period, not exceeding three years.
- (2) The court shall not make an order for periodical payments or a lump sum unless the order is justified by the principles set out in this section and it is satisfied that an order for transfer of property under section 4 would be inappropriate or insufficient to satisfy the requirements of this section. 20
- (3) In deciding whether to exercise its powers to make a periodical payments or lump sum order in favour of one of the parties to the marriage the court shall take into account –
- (a) any economic advantage derived by either party from contributions by the other, and of any economic disadvantage suffered by either party in the interests of the other party or of their family; 25
 - (b) any economic burden of caring after divorce for a child of the family under the age of 16 years which should be shared fairly between the parties; 30
 - (c) that a party who has been dependent to a substantial degree on the financial support of the other party should be awarded such periodical payments or a lump sum as is reasonable to enable him or her to adjust to the loss of that support on divorce over a period of not more than three years from the date of the decree of divorce; 35
 - (d) that a party who at the time of the divorce is likely to suffer serious financial hardship as a result of the divorce should be awarded such periodical payments or a lump sum as is reasonable to relieve him or her of hardship over a reasonable period, of not more than three years in total. 40
- (4) In assessing economic advantage and disadvantage in subsection (3)(a) the court shall take into account –
- (a) advantage gained whether before or during the marriage, including gains in capital, in income and in earning capacity, and “disadvantage” shall be construed accordingly; 45
 - (b) whether the economic advantages or disadvantages incurred by either party have been balanced by the economic advantages or disadvantages incurred by the other party; and

- (c) whether any resulting imbalance has been or will be corrected by a sharing of the value of the matrimonial property or otherwise.
- (5) In assessing contributions in subsection (3)(a), the court shall take into account contributions made before or during the marriage, including indirect and non-financial contributions and any such contribution made by looking after the family home, caring for the family or supporting the family financially. 5
- (6) For the purposes of this section, the court shall have regard to—
- (a) the age, health and earning capacity of the party who is claiming the periodical allowance;
 - (b) the duration and extent of the dependence of that party prior to divorce; 10
 - (c) any intention of that party to undertake a course of education or training;
 - (d) any support available to the claimant from a third party;
 - (e) the needs and resources of the parties; 15
 - (f) all the other circumstances of the case.
- (7) An order made under this section shall cease to have effect on the person receiving payment—
- (a) marrying,
 - (b) entering into a civil partnership, 20
 - (c) dying,
- except in relation to any arrears due under it.
- 6 Children of the family**
- For the purposes of orders made under sections 4(1) and 5(1), the court shall have regard to— 25
- (a) any order for support for the child;
 - (b) the need to provide suitable accommodation for the child;
 - (c) the age and health of the child;
 - (d) the educational, financial and other circumstances of the child;
 - (e) the availability and cost of suitable childcare facilities; 30
 - (f) the needs and resources of the parties.
- 7 Conduct**
- In making orders under sections 4(1) and 5(1), the court shall not take account of the conduct of either party to the marriage unless—
- (a) the conduct has adversely affected the financial resources which are relevant to the decision of the court on a claim for financial provision; or 35
 - (b) it would be manifestly inequitable to leave the conduct out of account.
- 8 Short title, commencement and extent**
- (1) This Act may be cited as the Divorce (Financial Provision) Act 2014.
 - (2) This Act comes into force three months after Royal Assent. 40
 - (3) This Act extends to England and Wales.

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Baroness Deech

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